

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5937 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MALI SONAJI KHEMAJI

Versus

STATE OF GUJARAT

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Appearance:

MS KUSUM M SHAH for Petitioner

MR KC SHAH for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/03/97

ORAL JUDGEMENT

1. The petitioner has filed this petition and challenge is made thereunder to the order of the Collector dated 31st December, 1981, annexure 'D' and the notice dated 21st September, 1984 of the Talati-cum-Mantri.

2. Under the order dated 31st December, 1981, annexure 'D', the land allotted to the petitioner under

the order dated 6-6-1977 has been cancelled. This has been done by exercising revisional power under sec.211 of the Bombay Land Revenue Code.

3. The facts which are not in dispute, in brief, are as under:

The land which was recorded in the name of Motaji Joitaji in the revenue record of Village Bhakharnana has been acquired by the State Government for the construction of the Principal Campus of the Gujarat Agricultural University. That notification is dated 14th February, 1973. Earlier to the said date, the land has been partitioned by Motaji Joitaji amongst his brothers and that entry has been made in the revenue record of rights on 19th January, 1972. There was a Government resolution under which it has been resolved that the persons whose lands have been acquired for the purpose of construction of Principal Campus of the Gujarat Agricultural University and have become landless they may be allotted the lands on permanent basis charging premium from them. All the three persons namely, Motaji Joitaji, Chhogaji Joitaji and Somaji Khemaji have been allotted the lands on premium. The order of the allotment has been made in favour of the petitioner on 6-6-1977. The petitioner was put in possession of the land allotted and thereafter he has incurred considerable expenses to make it fertile. The petitioner has been allotted 2 acres and 19 gunthas of the land.

4. The allotment of the lands made in favour of the petitioner and others were sought to be cancelled by exercising revisional power under sec.211 of the Bombay Land Revenue Code, and in this respect notice was given to the petitioner and others. The notice which was given to the petitioner is dated 27th July, 1981. Similar notice was given to Motaji Joitaji. All the matters were decided together by the Collector and under the impugned order dated 31st December, 1981, the allotment of the lands made in favour of the petitioner and Motaji Joitaji has been cancelled.

5. Motaji Joitaji challenged that order of the Collector before this Court by filing Special Civil Application No.1117/82 which came to be allowed by this Court on 23rd March, 1982. A copy of the judgment of this Court has been placed by the petitioner on the record of this Special Civil Application. The petitioner has not challenged that order at the relevant time and has given excuse that the copy of the same was not made available to him by his counsel, to whom the order was

sent by the Collector. He came to know about this order only when the notice dated 21st September, 1984 was issued by Talati-cum-Mantri on the basis of the said order, for making necessary correction in the revenue record. Then he filed this Special Civil Application before this Court.

6. One of the contentions raised by the learned counsel for the petitioner is that the notice for cancellation of the allotment has been given by the Collector after more than four years of the allotment, and as such, the revisional power exercised in the present case cannot be said to be exercised within reasonable time. It has next been contended that the land has wrongly been taken to be the land of Motaji only. Much earlier to the date of notification under sec.4 of the Land Acquisition Act, the land was partitioned amongst the three brothers and they were already in possession of the separate portion of the lands, and as such, on the basis of this fact, the petitioner has rightly been allotted the land by the respondents. The counsel for the petitioner in support of his first contention placed reliance on the decision of this Court in the case of Motaji Joitaji and the decision of the Apex Court in Civil Appeal No.5023/85 in the case of Mohamad Kavi Mohamad Amin vs. Fatimabai Ibrahim decided on 22nd August, 1996.

7. On the other hand, the counsel for the respondents, Shri K.C. Shah contended that by mistake the allotment has been made to the petitioner and other person. The land was of Motaji Joitaji and only one unit could have been allotted, but it was taken to be a land belonging to three persons, and as such, each person has been allotted the land for which there is no justification. It is a case of rectification of the error made. It has next been contended that as the initial allotment of the land to the petitioner is bad, and as such, the rectification of that error could have been made at any time and the question of limitation will not come in the way of the authorities as no limitation has been prescribed under sec.211 of the Bombay Land Revenue Code for exercise of the powers thereunder. Lastly, the counsel for the respondents contended that the case of Motaji Joitaji is not similar to the case of the petitioner.

8. In rejoinder to the submissions made by the learned counsel for the respondents, the counsel for the petitioner contended that the respondents have acted arbitrarily. The land has also been allotted to the

third brother Chhogaji Joitaji, but in the case of that allotment, no action has been taken whatsoever for cancellation of the same. It has further been submitted that the petitioner has also spend money in levelling the land to make it cultivable and further he jointly with his uncle Chhogaji occupant of the contiguous land constructed a well and put up machine for drawing water after incurring considerable expenditure.

9. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. I do not find anything in this Special Civil Application that the respondents have not taken any action for cancellation of the allotment of the land made in favour of Chhogaji Joitaji. It is a question of fact and in the absence of any specific pleadings in the Special Civil Application, it is difficult to allow the petitioner to raise this issue. The respondents have not tried to submit any reply as well as to bring on the record the correct position. In view of this fact, the ground which has been raised by the counsel for the petitioner that the respondents have not taken any action to cancel the allotment of the land made in favour of Chhogaji Joitaji cannot be accepted.

10. I have gone through the judgment of this Court given in Special civil Application No.1117/82 in the case of Mali Motaji Joitaji vs. Shri C.S. Joshi on 29th March, 1982. The counsel for the petitioner therein advanced two fold contentions before this Court. The first contention was raised that the Collector was not entitled under sec.211 of the Bombay Land Revenue Code to exercise revisional jurisdiction after a lapse of almost four years in view of the decision of the Supreme Court in the case of State of Gujarat vs. Patel Raghav Natha, (1969) 10 GLR 992. The second contention was raised on merits. However, the learned Court has not decided the second contention observing that it is not necessary for the Court to go into the second contention because in the opinion of the Court that petition has to be succeed on the first ground. So it is correct to say on the part of the counsel for the petitioner that this Court has decided the case of Motaji Joitaji only on the ground that the Collector has not exercised the revisional power within reasonable time.

11. The order cancelling the allotment of the land made in favour of the petitioner and Motaji Joitaji is a common order and the very order was considered to be not tenable by this Court on the ground that the matter had become sufficiently stale for the Collector to exercise

revisional power under sec.211 of the Code. The said order also cannot be allowed to be maintained in the case of the petitioner. The delay of giving notice for exercise of revisional power in the case of the petitioner as well as in the case of Motaji Joitaji was of more than four years.

12. In the case of Mohamad Kavi Mohamad Amin vs. Fatimabai Ibrahim (supra) there was a delay of about six years in exercise of suo motu revisional power. That was a case in connection with sec.84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 which also provides the suo motu revisional power. The Apex Court in that case considered the delay of six years to be fatal to the matter and the suo motu power under sec. 84-C of the Act, 1948, exercised in that case by the Mamlatdar was held to be not within reasonable time.

13. In view of the fact that the order impugned in this Special Civil Application has already been set aside though in the case of other person by this Court on the ground that the revisional power has not been exercised in the case within reasonable time, and this matter is squarely covered by that decision, it is not necessary for me to advert to all other contentions raised by the counsels for the petitioner and the respondents in this case.

14. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Collector dated 31st December, 1981 passed in Land 3: Vashi: 3340 to 3351, annexure 'D' is quashed and set aside. Consequently, the notice of the Talati-cum-Mantri dated 21st September, 1984, annexure 'C' stands quashed and set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

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